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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197627
Party	Defendant Nufarm Americas Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

U.O. MERCHANDISE, INC.,)	
)	
Opposer,)	
v.)	Opposition No. 91197627
)	
NUFARM AMERICAS INC.,)	
)	
Applicant.)	

ANSWER AND AFFIRMATIVE DEFENSES
TO NOTICE OF OPPOSITION

Applicant the Nufarm Americas Inc. ("Applicant"), by and through its attorneys, submits its Answer to Opposer U.O. Merchandise, Inc.'s ("Opposer") Notice of Opposition and states as follows:

1. Opposer is the owner of the following registrations:

Registration No. 3,636,692 - TERRAIN for "retail lawn, garden and nursery stores; retail gift shops," in Class 35; "restaurant services," in Class 43; and "landscape gardening; lawn and yard care services; tree and shrubbery care services," in Class 44; filed July 30, 2007 and registered June 9, 2009 (use in commerce since June 6, 2008).

A true and correct copy of the U.S. Patent and Trademark Office's TARR reports setting forth the particulars of the above-listed registrations and copies of the cited registrations are attached hereto as Exhibit A.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 1 and therefore denies the same. Applicant further states the publicly available records of the United States Patent & Trademark Office ("USPTO") speak for themselves.

2. Opposer is the owner of the following allowed application:

Serial No. 77/241,618 - TERRAIN for "gardening tools, namely, hoes, rakes, spades, trowels, weeding forks, shears, hand tools in the nature of clippers," in Class 8; "indoor and outdoor furniture; wind chimes," in Class 20; "flower pots, planters for flowers and plants, gardening gloves; decorative plates, bowls and cups," in Class 21; and "live plants, trees, bushes and shrubs excluding wine grapes and alfalfa; live and cut flowers; seeds for plants, flowers and grass excluding wine grapes and alfalfa; bulbs," in Class 31; filed July 30, 2007 and allowed April 15, 2008.

A true and correct copy of the U.S. Patent and Trademark Office's TARR report setting forth the particulars of the above-listed application is attached hereto as Exhibit B.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 2 and therefore denies the same. Applicant further states the publicly available records of the USPTO speak for themselves.

3. As early as June 6, 2008, Opposer, through its predecessor and related companies, has continuously used the mark TERRAIN® in commerce for services in the field of lawn, garden and nursery stores, restaurants, and landscape and yard care.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 3 and therefore denies the same.

4. As early as June 6, 2008, Opposer, through its predecessor and related companies, has continuously used the mark TERRAIN AT STYER'S® in commerce for services in the field of lawn, garden and nursery stores, retail stores and restaurants.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 4 and therefore denies the same.

5. As early as July 1, 2008, Opposer, through its predecessor and related companies, has continuously used the mark TERRAIN AT STYER'S® in commerce for services in the field of landscape and yard care.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 5 and therefore denies the same.

6. The Application was filed by Applicant on May 14, 2010 covering "herbicides; pesticides" in Class 5, on an intent-to-use basis.

ANSWER: Applicant admits the allegations set forth in paragraph 6.

7. On information and belief, Applicant has not used the mark TERRAIN in connection with Applicant's Goods prior to the May 14, 2010 filing date of application Serial No. 85/039,301.

ANSWER: Applicant admits the allegations set forth in paragraph 7.

8. On information and belief, Applicant has not used the mark TERRAIN in connection with any goods sold or transported in the ordinary course of trade in the United States prior to the May 14, 2010 filing date of application Serial No. 85/039,301.

ANSWER: Applicant admits the allegations set forth in paragraph 8.

9. On information and belief, Applicant has not used the mark TERRAIN in connection with any goods sold or transported in the ordinary course of trade in the United States as of the filing date of this opposition.

ANSWER: Applicant admits the allegations set forth in paragraph 9.

10. The earliest priority date on which Applicant can rely in connection with the goods covered by application Serial No. 85/039,301 is the May 14, 2010 filing date.

ANSWER: Applicant states that the allegations set forth in paragraph 10 call for a legal conclusion and therefore no answer is required.

11. The goods for which Applicant has applied to register the TERRAIN mark in Class 5 and the services offered by Opposer in connection with its TERRAIN® and TERRAIN AT STYER'S® marks are related and similar.

ANSWER: Applicant denies the allegations set forth in paragraph 11.

12. The goods for which Applicant has applied to register the TERRAIN mark in Class 5 and the goods Opposer intends to offer in connection with its allowed TERRAIN trademark application are related and similar.

ANSWER: Applicant denies the allegations set forth in paragraph 12.

13. The goods for which Applicant has applied to register the TERRAIN mark in Class 5 and the services offered by Opposer in connection with its TERRAIN® and TERRAIN AT STYER'S® marks may be offered or sold through the same channels of trade.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 13 and therefore denies the same.

14. The goods for which Applicant has applied to register the TERRAIN mark in Class 5 and the goods Opposer intends to offer in connection with its allowed TERRAIN trademark application may be offered or sold through the same channels of trade.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 14 and therefore denies the same.

15. The goods for which Applicant has applied to register the TERRAIN mark in Class 5 and the services offered by Opposer in connection with its TERRAIN® and TERRAIN AT STYER'S® marks may be offered or sold to the same class of purchasers.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 15 and therefore denies the same.

16. The goods for which Applicant has applied to register its TERRAIN mark in Class 5 and the goods Opposer intends to offer in connection with its allowed TERRAIN trademark application may be offered or sold to the same class of purchasers.

ANSWER: Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 16 and therefore denies the same.

17. Applicant's TERRAIN mark is identical in appearance, sound and commercial impression as Opposer's TERRAIN® and allowed TERRAIN marks.

ANSWER: Applicant admits the allegations set forth in paragraph 17.

18. Applicant's TERRAIN mark is nearly identical in appearance, sound and commercial impression as Opposer's TERRAIN AT STYER'S® mark.

ANSWER: Applicant denies the allegations set forth in paragraph 18. Applicant further denies that “the initial, dominant term found III Opposer's TERRAIN AT STYER'S® mark.”

19. Applicant's TERRAIN mark is the initial, dominant term found III Opposer's TERRAIN AT STYER'S® mark.

ANSWER: Applicant denies the allegations set forth in paragraph 19. Applicant further denies that “the initial, dominant term found III Opposer's TERRAIN AT STYER'S® mark.”

20. Applicant's use and registration of TERRAIN in connection with Applicant's Goods is likely to cause confusion, mistake or deception by having the public erroneously assume or believe that the goods emanate from Opposer, or that they are endorsed, licensed or sponsored

by, or in some other way associated or connected with Opposer, in view of Opposer's TERRAIN® and TERRAIN AT STYER'S® registrations, all to Opposer's irreparable damage.

ANSWER: Applicant denies the allegations set forth in paragraph 20.

21. Applicant's use and registration of TERRAIN in connection with Applicant's Goods is likely to cause confusion, mistake or deception by having the public erroneously assume or believe that the goods emanate from Opposer, or that they are endorsed, licensed or sponsored by, or in some other way associated or connected with Opposer, in view of Opposer's allowed TERRAIN application, all to Opposer's irreparable damage.

ANSWER: Applicant denies the allegations set forth in paragraph 21.

22. Opposer will be injured by the registration of Applicant's TERRAIN mark because this would falsely suggest a connection between Applicant and Opposer.

ANSWER: Applicant denies the allegations set forth in paragraph 22.

23. Upon information and belief, Applicant's registration should be denied because Applicant did not have a bona fide intent to use the TERRAIN mark in commerce for the goods specified in the Application when filed by the Applicant.

ANSWER: Applicant denies the allegations set forth in paragraph 23.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief can be granted and, in particular, fails to state legally sufficient grounds for sustaining the opposition.
2. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods and services, nor will such use be thought by the public to be used by Opposer with Opposer's authorization or approval.
3. Applicant's mark in its entirety is sufficiently distinctive from Opposer's mark so as to avoid confusion, deception, or mistake as to the source of sponsorship or association of Applicant's services.
4. Applicant's mark, when used with Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's services by Opposer.
5. Applicant reserves its right to assert additional affirmative defenses as it may be determined through discovery.

WHEREFORE, Applicant requests that the Opposition be dismissed and that the opposed application be passed to registration.

Respectfully submitted,

Nufarm Americas Inc.

By its attorneys,

/s/Dianne Smith-Misemer
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Attorneys for Applicant

CERTIFICATE OF FILING

I hereby certify that the foregoing Answer to the Notice of Opposition regarding Ser. No. 85039301 is being electronically filed with the United States Patent and Trademark Office – Trademark Trial and Appeal Board.

January 7, 2011

/S/Dianne Smith-Misemer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer to Notice of Opposition was deposited with the United States Postal Service as first class mail, postage prepaid, on this 7th day of January, 2010 to:

William J. Lehane
Drinker Biddle & Reath
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Philadelphia, PA 19103
UNITED STATES

/S/Dianne Smith-Misemer